IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.5349 of 2006

M/s.L.U.Navalakha & Sons Petitioners
Vs.
M/s.Navyug Chitrapat Co. Ltd. & ors. Respondents

Mr.Y.S.Jahagirdar, Sr.Counsel with Mr.T.D. Deshmukh for petitioners.

Mr.K.K.Singhavi, Sr.Counsel with Mr.P.B.Shah and Mr. Vaibhav Sugdare for respondent no.3(b-2)

CORAM: B.H.MARLAPALLE,J.

August 10, 2006.

P.C.

1. Heard Mr.Jahagirdar, the learned Sr. Counsel with Mr.T.D.Deshmukh for petitioners and Mr.K.K. Singhavi, the learned Sr.Counsel with Mr.P.B.Shah and Mr.Sugdare for respondent no.3(b-2). This petition arises from the order passed by the learned 10th Ad-hoc Addl. District Judge thereby rejecting the application field at Exhibit 6 in Civil Appeal No.362 of 2006 on 31/7/2006. In Regular Darkhast No.492 of 1993 J.D. No.3 had filed an application below Exhibit 573 under Order XXI Rule 97 of CPC and another application came to be filed at Exhibit 588 by the very same applicants for appointment of new liquidator. They also filed an application at Exhibit 582 praying to allow the application at

Exhibit 573 and yet another application at Exhibit 581 stating that the proceedings could not go further unless an appointment of the new liquidator was made. All these applications were heard together and rejected by the learned Addl. Judge of the Small Causes Court at Pune on 27th March 2006 as the Executing Court. These orders came to be challenged in an appeal filed on or about 24/4/2006 before the District Court at Pune and the application at Exhibit 6 was filed in the said appeal praying for stay to the execution and operation of the order dated 27/3/2006 as well as the execution proceedings. Therefore, this petition will have to be treated as the one filed under Article 227 of the Constitution.

2. Before the merit of the challenge is examined, it will be necessary to state the brief facts leading to this petition. Civil Suit No.4289 of 1962 was dismissed on 31/10/1968 and in the meanwhile in an auction sale confirmed by the Company Court the present petitioners had purchased the suit property and sale deed was executed on 4/5/1963. The order of the Small Causes Court dismissing the Suit came to be challenged in Civil Appeal No.934 of 1968 and the learned District Judge was pleased to decree the suit

by his judgment and order dated 11/3/1970. The liquidator filed an application on or about 10/5/1970 before the District Court seeking leave to challenge the decree passed by the District Court and the said application was allowed on certain conditions and this decree passed by the District Court came to be challenged before this Court in Second Appeal which was allowed on 13/9/1974 and the eviction decree was set aside by this Court. The landlord, therefore, approached the Supreme Court in Civil Appeal No.1138 of 1975 and the same was allowed on 27/7/1993 and thus the execution decree passed by the District Court on 11/3/1970 came to be confirmed by the Apex Court. Consequently the landlords filed RD No.492 of 1993 for execution of the decree before the Small Causes Court and in the said proceedings the present petitioners or some of them filed objections on 1/3/1994 and additional objections on 3/1/1996 contending that the execution proceedings were not maintainable and the said issue was required to be decided as the preliminary issue. Both these objections were not considered by the executing Court and, therefore, the petitioners approached this Court in CRA No.571 of 1996 which was disposed off on 6/9/1996 by granting liberty to the petitioners to

file fresh objections under Order XXI Rule 97 of CPC and if such objections were filed, they shall be considered in accordance with law by the executing Court. The petitioners again approached this Court in Writ Petition No.4760 of 1997 against the orders passed by the executing Court on 24/4/1997 as well as the revisional Court on 1/8/1997. While disposing off the said petition this Court modified the impugned orders on 8/10/1997 and para 2 of the said order reads as under:

> "2. In view of the submission made by the learned counsel for the petitioner and Respondent nos.1 to 10 the writ petition is disposed of by following order:
>
> (a) The 7th Additional Judge of Small Causes Court, Pune shall frame the following points for determination in Darkhast No.492 of 1993 including the objections under Order 21, Rule 97 CPC:
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> (i) Whether the obstructionists Nos.2 and 3 prove that they have acquired the rights as tenants with

protection under Bombay Rent Act on the basis of the purchase in the public auction and sale deed dated 4.5.1963 from the liquidator?

(ii) Whether the decree passed by the Court of Small Causes at Pune is without jurisdiction as contended in the objections filed below Exhibits 59, 196, 123 and 217/181, 198, 200 Ex.60?

(b) After framing the aforesaid points for determination, the concerned Court shall permit the parties to lead evidence documentary as well as oral.

(c) The parties shall appear before the concerned Court on 16th October 1997, the date already fixed and on that day the concerned Court shall frame the aforesaid points for determination and fix the date for recording of evidence.

(d) Looking to the controversy involved,

the concerned Court is expected to hear and decide Darkhast No.492 of 1993, including the objections under Order XXI, Rule 97, CPC taken by the landlord, as expeditiously as possible and in no case later than six months from the date of appearance of the parties on 16.10.1997.

(e) The concerned Court shall ensure that Darkhast No.492 of 1993, including the objections under Order XXI, Rule 97, CPC are disposed of within the aforesaid time and no extension for disposal of Darkhast is sought."

3. While this round of litigation pursuant to the applications filed on 1/3/1994 and 3/1/1996 was going on the petitioners preferred to file Regular Civil Suit No.272 of 1996 seeking a declaration that the decree passed by the District Court and confirmed by the Supreme Court be declared as illegal, null and void and inoperative as it was obtained by practising fraud and in collusion. The respondents' application filed under Order VII Rule 11 contending that the petitioners' remedy was under Order XXI Rule 97 of CPC was allowed and the suit was rejected on

21/7/2000. This order was challenged before the District Court and the appeal was also dismissed. The petitioners came before this Court in Second Appeal No.279 of 2002. While dismissing the Second Appeal on 2/5/2002, holding that there was no substantial question of law involved in the said Second Appeal and at the same time this Court noted that the District Court was right in observing that the petitioners - appellants had the remedy under Order XXI Rule 97. Based on this observation the petitioners filed an application at Exhibit 573 before the executing Court in RD No.492 of 1993.

4. Simultaneously the objection applications filed earlier under Order XXI Rule 97 pursuant to the orders passed by this Court on 6/9/1996 and 8/10/1997 came to be decided and in fact rejected by the executing Court on 6/3/1999. Civil Appeal No.251 of 1999 against the rejection order was also dismissed on 3/2/2003. Two parallel proceedings thereafter came before this Court i.e.Second Appeal No.488 of 2003 and Writ Petition No.2223 of 2004 at the instance of the present petitioners and by a common order dated 19/3/2004 the Second Appeal was dismissed in limine and the writ petition was rejected summarily. The petitioners claim that they have filed LPA No.305/2004 against the dismissal of the Writ Petition.

5. Mr.Jahagirdar, the learned Senior Counsel submitted that when the appellate remedy had been invoked by the petitioners against the order passed by the executing Court rejecting the application filed under Order XXI Rule 97, it was necessary for the lower Appellate Court to allow the application at Exhibit 6 and stay the proceedings in Regular Darkhast as well as further issuance of possession warrant etc. He also submitted that the lower appellate Court appears to have acted in haste and perhaps influenced by the order passed by this Court (Division Bench) in Writ Petition No.2941 of 2006 on 17th July 2006 and in any case the impugned order rejecting the application for interim stay has resulted in miscarriage of justice and virtually brought the execution proceedings to a final decision as nothing further would survive in the said proceedings once the attachment warrant is executed.

6. The learned Judge of the lower Appellate Court in the impugned order has held that the appeal and the application for stay were not filed promptly, there was no sufficient cause made out to allow the stay petition and the petitioners could not make out a case that rejection of the stay petition would

cause substantial loss to them. The lower Appellate Court referred extensively to the factual matrix and noted that it was not for the first time that the petitioners had approached the executing Court by Exhibit 573 and, therefore, they were not entitled for equitable relief on such subsequent applications.

7. It is required to be noted at this stage that by an order dated 22nd December 2005 the Division Bench of this Court directed the executing Court to dispose off the pending Regular Darkhast as expeditiously as possible and preferably within a period of three months from that date. When the Liquidator was granted leave by the District Court to challenge its decree before this Court certain conditions were imposed and it was subsequently found that the conditions were not complied with. On 19th March 1997 the District Court was also called upon to pass an order below Exhibit 499 and the said order reads thus:

> "The words "answerable to all the claims in favour of the landlord" appearing in the said term are very material, and they show that they include the landlords' claim for

possession as well as for mesne profits. Since the Navlakhas have bound themselves, they are liable to satisfy the claims made by the landlords pursuant to the decree passed by the Supreme Court. It is, therefore, futile for them to raise any contention which is contrary to the undertaking given by them. In fact, they are estopped from raising any contention that they are not bound by the decree passed by the Supreme Court."

. The sale deed dated 4th May 1963 referred to hereinabove specifically stated that the suit was pending between the applicants and the liquidator and the petitioners were purchasing the rights subject to the decree in the litigation. On 3/8/2006 the learned District Judge at Pune while disposing off the oral application seeking to initiate the contempt proceedings against the petitioners has passed the following order:

"M/s.Navlakha & Sons and M/s. L.U. Navlakha & Sons are directed to hand over possession of the demised property to the applicants within a period of six weeks from today.

A reference be made to the Hon'ble Court for proceeding against M/s.Navlakha & Sons and M/s. L.U. Navlakha & Sons for committal of contempt under Contempt of Courts Act, 1971."

8. Once the petitioners had exhausted their remedy of filing an application under Order XXI Rule 97 of CPC pursuant to the order passed by this Court on 6/9/1996 disposing off the civil revision application and on 8/10/1997 disposing off the Writ Petition No.4760 of 1997, their contentions to file such an application for the second time before the executing Court and that too based on the observations made by this Court in its order dated 2/5/2002 dismissing Second Appeal No.279 of 2002 are the issues which the lower Appellate Court may consider and at the same time by noting that Letters Patent Appeal No.305 of 2004 has been filed by the petitioners before this Court against the order passed by the learned Single Judge on 19/3/2004. However, from the totality of circumstances which has been referred to hereinabove and considered by the learned Judge of the lower Appellate Court in the impugned order, it is clear that the application

filed by the petitioners at Exhibit 6 praying for interim relief was rightly rejected and it is not necessary that in every pending appeal which is a statutory remedy, that an order of interim relief must follow. By analysing the sequence of events the learned Judge of the lower Appellate Court recorded a prima facie finding that there was no case made out to grant any further relief pending the appeal and this view taken by the learned Judge cannot be termed as perverse or palpably erroneous so as to call for interference under the supervisory jurisdiction of this Court under Article 227 of the Constitution and in any case the lower Appellate Court has directed the expeditious hearing of the appeal.

. Hence the petition is rejected summarily and it is directed that the pending appeal be decided expeditiously in accordance with law and preferably within a period of three months from the date of receipt of writ from this Court. Writ to go forthwith.

(B.H.MARLAPALLE,J.)